

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

MARIANTO PETTUS,  
Plaintiff,

Case No. 1:12-cv-561  
Weber, J.  
Litkovitz, M.J.

vs.

COMMISSIONER OF  
SOCIAL SECURITY,  
Defendant.

**REPORT AND  
RECOMMENDATION**

Plaintiff brings this action pursuant to 42 U.S.C. § 405(g) for judicial review of the final decision of the Commissioner of Social Security denying plaintiff's application for disability benefits. Plaintiff's complaint was filed on August 3, 2012 (Doc. 3), and the Commissioner filed an answer to the complaint on November 5, 2012. (Doc. 7). The administrative record was filed manually on November 7, 2012. (11/7/12 docket entry).

Plaintiff's case was subsequently referred to the District Court's Referral Panel of Attorneys for Pro Se Social Security Disability/SSI Appeals for possible appointment of counsel on December 27, 2012 (Doc. 8), but no social security panel attorney agreed to enter an appearance for the representation of plaintiff in this matter. The Court therefore ordered plaintiff to proceed pro se and granted plaintiff an extension of time until July 5, 2013, to file and serve a statement of specific errors with the Court pursuant to the Magistrate Judges' General Order Concerning Social Security Appeals. (Doc. 9). Plaintiff failed to comply with the Court's order. Accordingly, on July 9, 2013, the Court ordered plaintiff, within twenty (20) days of the filing date of its order, to either file a statement of errors or show cause why the complaint should not be dismissed for lack of prosecution and failure to comply with the Court's general order. (Doc.

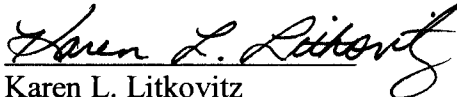
11).

Although plaintiff was served with the show cause order (Doc. 12), plaintiff has failed to file a statement of errors or otherwise respond to the show cause order to date. Accordingly, dismissal of plaintiff's complaint for lack of prosecution is appropriate. *See* Fed. R. Civ. P. 41(b); *Link v. Wabash R.R.*, 370 U.S. 626, 630-631 (1962); *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991).

**IT IS THEREFORE RECOMMENDED THAT:**

1. Plaintiff's complaint be **DISMISSED** with prejudice for lack of prosecution.
2. The Court certify pursuant to 28 U.S.C. § 1915(a) that for the foregoing reasons an appeal of any Order adopting this Report and Recommendation would not be taken in good faith and therefore deny plaintiff leave to appeal *in forma pauperis*. Plaintiff remains free to apply to proceed *in forma pauperis* in the Court of Appeals. *See Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), overruling in part *Floyd v. United States Postal Serv.*, 105 F.3d 274, 277 (6th Cir. 1997).

Date: 8/5/13

  
Karen L. Litkovitz  
United States Magistrate Judge

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Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

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